

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>BENJAMIN T. NASH</b>	:	: <b>CIVIL ACTION</b>
	:	
v.	:	: <b>NO. 23-3679</b>
	:	
<b>BRIAN MITCHELL</b>	:	

**ORDER**

**AND NOW**, this 17<sup>th</sup> day of November 2023, upon screening the incarcerated pro se Plaintiff's amended Complaint (ECF No. 7) consistent with Congress's mandate under section 1915, and for reasons in today's accompanying Memorandum, it is **ORDERED** we:

1. **DISMISS** the Philadelphia Police Department with prejudice;
2. **DISMISS** claims without prejudice against:
  - a. the City of Philadelphia on a municipal liability theory;
  - b. Officer Brian Mitchell for false arrest or imprisonment;
3. **ALLOW** Plaintiff to proceed on his excessive force claim against Officer Brian Mitchell requiring:
  - a. The case shall proceed at this time to service **of the amended Complaint (ECF No. 7) and this Order** by the U.S. Marshal Service, under 28 U.S.C. § 1915(d) and Federal Rule of Civil Procedure 4(c)(3) upon Philadelphia Police Officer Brian Mitchell:
  - b. In anticipation of service by the U.S. Marshal Service, the Clerk of Court is **DIRECTED** to send a copy of this Order to Mr. Nash together with one copy of the U.S. Marshal

Service of Process Receipt and Return Form USM-285 (“USM-285 Form”) for Officer Brian Mitchell.<sup>1</sup> The Clerk of Court is further **DIRECTED** to note the mailing on the docket;

c. To proceed with service, Mr. Nash must complete a USM-285 Form for Officer Brian Mitchell and return the completed form to the Clerk’s Office no later than **December 8, 2023**. Service cannot be made by the U.S. Marshal Service until Mr. Nash completes and returns these forms.

d. In completing the USM-285 Form(s), Mr. Nash is instructed as follows:

i. Only Defendant Brian Mitchell’s name should appear on the USM-285 Form;

ii. Mr. Nash should include as much identifying information as possible for Defendant Brian Mitchell, including the Defendant’s first name, last name, and, where relevant, the Defendant’s badge number;

iii. Mr. Nash must provide Defendant Brian Mitchell’s complete address at a location where that Defendant can be served. The U.S. Marshals Service cannot serve a Defendant at a P.O. Box address. It is Mr. Nash’s responsibility, and not the duty of the Court, the Clerk’s Office, or the Marshals Service, to ascertain the Defendant’s address. *See, e.g., Meade v. Reynolds*, 810 F. App’x 86, 88 (3d Cir. 2020) (*per curiam*) (“[T]he plaintiff must provide the district court with sufficient information to enable the Marshals Service to effectuate service of process.” (citing *Lee v. Armontrout*, 991 F.2d 487, 489 (8th Cir. 1993)); *Harris v. McMullen*, 609 F. App’x 704, 707 (3d Cir. 2015) (*per curiam*) (“Harris has not pointed to any authority instructing that a District Court or the USMS must engage in extraordinary measures to assist an [*in forma*

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<sup>1</sup> This form is available online at [https://www.usmarshals.gov/sites/default/files/media/document/usm-285\\_process-receipt.pdf](https://www.usmarshals.gov/sites/default/files/media/document/usm-285_process-receipt.pdf).

*pauperis*] litigant in locating a defendant's address for the purpose of service of process, and we are not aware of any.");

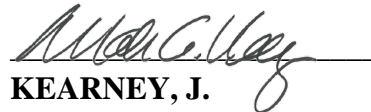
iv. Failure to include Defendant Brian Mitchell's proper address may result in the Defendant not being served and/or the dismissal of Mr. Nash's claims against this remaining Defendant;

e. Failure to timely return the completed USM-285 Form(s) consistent with this Order may result in dismissal for failure to prosecute without further notice;

f. The Clerk of Court is **DIRECTED** to docket all USM-285 Forms returned in this case;

4. **DIRECT** the Clerk of Court to not issue summonses until receipt of a properly completed USM-285 Form; and,

5. **GRANT** Plaintiff's request we **refer** his amended Complaint (as modified by this Order) to our Volunteer Panel of Attorneys for civil rights representation until **December 29, 2023** while effecting service on Defendant Brian Mitchell.

  
**KEARNEY, J.**